

REMARKS

Claims 11 and 12 are amended above as courteously suggested in the Action.

The rejections of independent claims 1, 15 and 22 under 35 USC 102 for anticipation by the cited Maimets patent are traversed because, for anticipation, "the reference must teach every aspect of the claimed invention either explicitly or impliedly." MPEP 706.02. Instead, there are at least two important aspects of the claimed invention neither explicitly nor impliedly taught by the patent.

An important aspect of the claimed invention neither explicitly nor impliedly taught by the patent is that the foamed plastic adhering tie layer "... is extruded simultaneously with the innermost layer against the base layer ..." as quoted from claim 15 and also in independent claims 1 and 22. As a result, there are no seams or ends to be joined or fastened layer-to-layer. However, in the patent, the porous gasket 19 between inner and base layers is a loose element. It has to be "... affixed by contact adhesive or by some appropriate mechanical means ..." as described at column 16, lines 18-24, of the patent in a step avoided by the different simultaneous extrusion of the claims. Therefore, the requirement of the claims for extruding simultaneously should receive more patentable weight than admitted hitherto.

Another important aspect of the claimed invention neither explicitly nor impliedly taught by the patent is the adhesion plastic of the tie layer that now explicitly self adheres to the inner and base layers. This confirms the distinction of the claimed tying layer from the gasket 19 of the patent because, as quoted above, the gasket needs "contact adhesive" or "mechanical means" of adhesion.

The gasket 19 of the Maimets patent can be, according to column 15, lines 37-43, an open celled plastic material, such as cellulose sponge foam or polyethylene open-celled foam, or any other material that can absorb a significant quantity of grout. That the gasket may be foam neither discloses nor suggests simultaneous extrusion for self adhesion as claimed.

Indeed, "... the primary purpose of the gasket is that of a grout carrier medium," as specifically described at column 15, lines 63, 64, of the patent. Grout carrying neither discloses nor suggests simultaneous extrusion for self-adhesive tying between inner and base layers, as claimed.

The grout carried by the gasket "... can be a member selected from the group consisting of a water-reactive expanding polyurethane grout; a water-reactive gel-forming grout; an epoxy hardening grout; and a cementitious grout," according to column 7, lines 11-14, of the Maimets patent. Even the Action does not identify which of these is the claimed foamed adhesion plastic.

The process limitation that the foamed plastic is "meltingly extruded simultaneously with the innermost layer against the base layer" together with the self adhering now claimed limit the structure of the product and, therefore, must be given more than the little weight suggested in the Action.

The structure implied by the process steps should be considered ... where the manufacturing process steps would be expected to impart distinctive structural characteristics to the final product. See, e.g., *In re Garnero*, 412 F2d 276, 279, 162 USPQ 221, 223 (CCPA 1979) (holding "interbonded by interfusion to limit structure") MPEP 2113.

Meltingly extruded simultaneously for self adhering as now claimed is "interbonded by interfusion" which is structural (MPEP 2113) and, therefore, an important aspect of distinction of the claims from the gasket and grout of the patent alone or together.

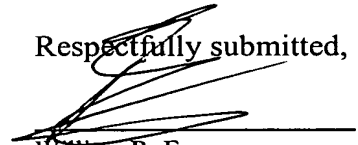
This important aspect of distinction of the claims is supported by their teaching.

While the comprising formulation of the claims permits other structure, the complete structure claimed teaches only the foamed adhesion plastic of the tying layer, whereas the patent, while perhaps permitting just the grout, clearly teaches combination with the gasket.

The teaching of the claims is one tying layer, the teaching of the Maimets patent is gasket and grout in a combination not claimed.

Reconsideration and allowance are, therefore, requested.

Respectfully submitted,



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